

WILLIAM J. GOINES (SBN 061290)
 KAREN ROSENTHAL (SBN 209419)
 CINDY HAMILTON (SBN 217951)
 GREENBERG TRAURIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Telephone: (650) 328-8500
 Facsimile: (650) 328-8508
 Email: goinesw@gtlaw.com
 rosenhalk@gtlaw.com
 hamiltonc@gtlaw.com

JEREMY A. MEIER (SBN 139849)
 GREENBERG TRAURIG, LLP
 1201 K Street, Suite 1100
 Sacramento, CA 95814-3938
 Telephone: (916) 442-1111
 Facsimile: (916) 448-1709
 Email: meierj@gtlaw.com

Attorneys for Defendants Polo Ralph Lauren
 Corporation; Polo Retail, LLC; Polo Ralph
 Lauren Corporation, doing business in California
 as Polo Retail Corporation; and Fashions Outlet
 of America, Inc.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

ANN OTSUKA, an individual and on behalf
 of all others similarly situated; JANIS
 KEEFE, an individual; CORINNE PHIPPS,
 and individual; JUSTIN KISER, an
 individual; and RENEE DAVIS,

Plaintiff,
 v.

POLO RALPH LAUREN CORPORATION;
 POLO RETAIL, LLC; POLO RALPH
 LAUREN CORPORATION, DOING
 BUSINESS IN CALIFORNIA AS POLO
 RETAIL CORPORATION; AND
 FASHIONS OUTLET OF AMERICA, INC.,

Defendants.

Case No. C07-02780 SI

**DEFENDANTS' MOTION *IN LIMINE* NO. 4
 TO EXCLUDE EVIDENCE OF POLO'S
 REMEDIATION MEASURES**

Pretrial: February 23, 2010
 Time: 3:30 p.m.
 Dept.: Courtroom 10, 19th Floor
 Judge: Hon. Susan Illston

Trial Date: March 8, 2010

1 **I. INTRODUCTION**

2 Defendants Polo Ralph Lauren Corporation; Polo Retail, LLC; Polo Ralph Lauren
3 Corporation, doing business in California as Polo Retail Corporation; and Fashions Outlet of
4 America, Inc. (collectively “Polo”) hereby move this Court for an Order to exclude evidence at trial
5 relating to, referring to, or discussing any subsequent remedial measures taken by Polo as a result of
6 the claims at issue in this case.

7 Polo respectfully requests that the Court enter an order, *in limine*, as follows:

8 That Plaintiffs may not introduce, elicit, discuss or refer to any
9 evidence of subsequent remedial measures taken by Polo as a result of
the claims at issue in this case

10 As discussed below, this motion is based upon the grounds that such evidence is not
11 admissible.

12 **II. ARGUMENT**

13 Plaintiffs may seek to introduce evidence that Polo has changed certain of its policies, in an
14 attempt to argue that such changes prove that Polo’s prior policies were unlawful. Such attempts
15 must fail. The Federal Rules of Evidence (“FRE”) do not permit the introduction of evidence of
16 subsequent remedial measures to prove negligence or culpable conduct. FRE 407 provides:

17 When, after an injury or harm allegedly caused by an event, measures are taken that, if
18 taken previously, would have made the injury or harm less likely to occur, evidence of
the subsequent measures is not admissible to prove negligence, culpable conduct, a
19 defect in a product, a defect in a product’s design, or a need for a warning or
instruction. This rule does not require the exclusion of evidence of subsequent
20 measures when offered for another purpose, such as proving ownership, control, or
feasibility of precautionary measures, if controverted, or impeachment.

21 Fed. R. Evid. 407. Courts “routinely exclude evidence of [subsequent remedial measures] to
22 encourage people to take such measures whether or not they are at fault.” *Petree v. Victor Fluid*
23 *Power, Inc.*, 831 F.2d 1191, 1198 (3d Cir. 1987). See also *Boeing Airplane Co. v. Brown*, 291 F.2d
24 310, 315 (9th Cir. 1961) (subsequent remedial measures are inadmissible with regard to the issue of
25 prior negligence); *Luera v. Snyder*, 599 F. Supp. 1459, 1463 (D.C. Col. 1984) (testimony of changes
26 in police department’s policies are inadmissible as evidence of a subsequent remedial measure);
27 *Maddox v. Los Angeles*, 792 F.2d 1408 (9th Cir. Cal. 1986) (evidence of Internal Affairs

1 investigation and measures taken by the defendant City were remedial measures taken after the
2 incident and therefore properly excluded with respect to the City's liability).

3 **III. CONCLUSION**

4 For the foregoing reasons, Polo respectfully requests that the Court grant Polo's Motion *in*
5 *Limine* No. 4.

6 Dated: February 8, 2010

GREENBERG TRAURIG, LLP

8 By: /s/ William J. Goines

9 William J. Goines

Jeremy A. Meier

Karen Rosenthal

10 Cindy Hamilton

11 Attorneys for Defendants Polo Ralph Lauren
12 Corporation; Polo Retail, LLC; Polo Ralph
13 Lauren Corporation, doing business in California
14 as Polo Retail Corporation; and Fashions Outlet
15 of America, Inc.